

Remarks

Claims 1 through 16 remain pending in the application.

The Office Action rejects claim 1-3, 5 and 6 as obvious over the several references New York Times, Basil Vodka to Peach Sake: Infusing Spirits With Daring (Aug. 16, 2000); the sake-world.com webpage, the winebusiness.com web page, and Blyth, et al., U.S. Publication 201/055646 (Dec. 27, 2001). The examiner explains that each of the claimed steps is suggested by one or another of the references.

The rejection fails to identify a motivation to combine all the steps as claimed. The rejection is based in part on Nakamura, Studies On Change Of Color And Flavor Of Sake Caused By Exposure To Light And Storage, 2 J. Soc. Brewing 153 (1970).¹ The abstract provided describes an experiment to test different compounds to see if they would inhibit sunlight-induced discoloration of the sake. The abstract states explicitly that ferulic acid, caffeic acid, ascorbic acid and sodium erythorbate reduce coloration, but that "Off-flavour of sake caused by sunlight was intensified by ascorbic acid, sodium erythorbate and FeCL2...." This provides an explicit teaching to avoid ascorbic acid (the other compounds are color stabilizers of no interest to the process of making infused sake). Moreover, the

¹ As the reference relied upon is a record from a database provider, and not the actual reference itself, the Applicant reserves the right to contest the publication date, and the fact of publication, if necessary.

motivation to add the compounds in the experiment was to reduce color changes caused by sunlight. This motivation does not enter into consideration for the Applicant's claimed infused sake, because (1) the added fruits will discolor the sake, so it makes no sense to add anything to reduce the discoloration of sunlight and (2) in modern distribution, including refrigerated trucks, refrigerated supermarket cases, and modern bottling facilities, sunlight exposure is not a significant issue. The applicant cares about the taste, not the color. Nakamura teaches how to save the color at the expense of the taste. Thus, there is no motivation to apply Nakamura, and in fact Nakamura teaches against the claims invention.

Other compounds listed by Nakamura, such as caffeic acid, are yellow, so it appears that they would act like food coloring, which is of no interest, and are found in fruits, so there addition to fruit-infused sake would be redundant. Caffeic acid may also be carcinogenic, which would lead one in the art to greatly discount the teaching of Nakamura. Ferulic acid is a precursor of vanillin, and would be expected to add unwanted flavor to the sake. FeCl₂ (ferrous chloride) is used in municipal water treatment, and you don't need to be one of skill in the art to know what that tastes like. It is used to remove metals and chlorides and phosphates from water, and its effect on the compounds added by infusion cannot be predicted. Again, these factors would lead one in the art to greatly discount the teaching of Nakamura: It is one thing to try them in an experiment, but quite another to inject them into infused sake and expect a good result. Thus, no artisan would be motivated to use the teachings of Nakamura in an attempt to improve sake flavor, nor would they have any expectation of

success in the attempt. According, the claimed method is not obvious.

The examiner has apparently assumed that discoloration is a problem, and that one in the art would be motivated to avoid discoloration by adding lots of chemicals. This is not a reasonable assumption, given the inevitable coloration caused by the infusion, and the absence of any indication that such coloration would be unpleasant or undesirable. It is the equivalent of trying to avoid the red coloration of cabernet sauvignon: no one of skill in that art would even think of it.

As to the remaining bases for rejection, though the examiner cites instances in the prior art in which each step has been performed, the examiner has not identified any motivation to practice all of the preservative steps together, in a single process. Each reference is complete in and of itself, and does not indicate any need for improvement. As pointed out previously, the multiplicity of preservative steps claimed would be seen as unnecessary, and thus there would be no motivation to accomplish every one of the identified preservative steps in a single brewing process. The expert declaration (Barnes declaration) to this effect has apparently been ignored. Given his expertise in sake brewing, and lack of such expertise in the Patent Office, his declaration should be considered and given substantial weight.

Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been

traversed. Reconsideration of the rejections and allowance of the claims is requested.

Date: February 8, 2007

By:



K. David Crockett, Esq.
Reg. No. 34311